

FILED  
UNITED STATES DISTRICT COURT CLERKS OFFICE  
DISTRICT OF MASSACHUSETTS

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MAKIKO YAMASHITA, Plaintiff, v. KAIJU STUDIOS LLC, DAVID BORDEN, RANDY BORDEN AND FENWAY RECORDINGS Defendants.	U.S. DISTRICT COURT DISTRICT OF MASS. MAGISTRATE JUDGE <u>MBO</u> Civil Action No. <u>62116</u> RECEIPT # <u>62116</u> AMOUNT \$ <u>250</u> SUMMONS ISSUED <u>Ye</u> LOCAL RULE 4.1 <u>✓</u> WAIVER FORM <u>✓</u> MCF ISSUED <u>✓</u> BY DPTY. CLK <u>POW</u> DATE <u>2/15/05</u>
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COMPLAINT; JURY DEMAND

For its Complaint, Plaintiff Makiko Yamashita alleges as follows:

The Parties

1. The Plaintiff Makiko Yamashita (“Ms. Yamashita”) is a musical composer, arranger, and producer living in Boston, Massachusetts and residing at 1111 Boylston St, #42, Boston, MA 02215.
2. Defendant Studio Kaiju LLC (“Studio Kaiju”) upon information and belief is a Massachusetts corporation, having its principal place of business at 325 Huntington Ave., Suite 101, Boston, MA 02115.
3. Defendant David Borden (“D. Borden”) upon information and belief is an owner and the C.E.O. of Studio Kaiju LLC, located at 325 Huntington Ave., Suite 101, Boston, MA 02115.
4. Defendant Randy Borden (“R. Borden”) upon information and belief, is an owner/officer and the Creative Director of Kaiju Studios LLC, located 325 Huntington Ave., Suite 101, Boston, MA 02115.
5. Defendants Studio Kaiju, R. Borden, and D. Borden will be referred to collectively as the “Kaiju Defendants.”

6. Defendant Fenway Recordings (“Fenway”) upon belief and information, is a Massachusetts corporation, having its principal place of business at 33 Richdale Ave., Cambridge, MA 02140.

Jurisdiction and Venue

7. The acts and practices complained of herein occurred substantially and primarily in the Commonwealth of Massachusetts. The Court has jurisdiction over the parties, who all reside or have a principal place of business in Massachusetts.

8. The Court has exclusive subject matter jurisdiction over the copyright claims in this Complaint under 28 U.S.C. § 1338(a) and 17 U.S.C. § 301(a) and has supplemental jurisdiction over the state law claims which arise from the same nucleus of operative facts, transactions and occurrences as the substantially related federal claims under 28 U.S.C. § 1337(a).

9. Venue is proper in this jurisdiction and district under 28 U.S.C. § 1400(a) as Defendants David Borden and Randy Borden reside within the district, as do defendant corporations Studio Kaiju and Fenway Recordings according to 28 U.S.C. § 1391(c), as they are subject to personal jurisdiction by virtue of having their principal places of business within the district.

Factual Allegations

10. Plaintiff Ms. Yamashita is a 2000 graduate of the Berklee College of Music, Boston, Massachusetts. She is a well-respected independent artist, musical composer, arranger and producer, specializing in Japanese pop culture music.

11. Defendant Studio Kaiju is a performance and media group and the creator of live and recorded “monster wrestling” spectacle events, which are a hybrid of American professional wrestling and Japanese monster movies. Studio Kaiju has been in business since at least 2001.

12. Studio Kaiju distributes merchandising related to the monster wrestling spectacle events in forms including VHS and DVDs, trading cards, and lunch boxes. Studio Kaiju also

has a website, [www.kaiju.com](http://www.kaiju.com), which has been maintained since at least 2001. A picture from Studio Kaiju's website is depicted below:



13. In September 2001, R. Borden, in his personal and professional capacity, asked Ms. Yamashita to provide a musical demonstration for potential use in the accompaniment of a monster wrestling event entitled "Kaiju Big Battel" produced by Studio Kaiju.

14. In November 2001, Ms. Yamashita provided to R. Borden a demonstration track of music for use in the accompaniment of "Kaiju Big Battel." Mr. Borden expressed his satisfaction with the demonstration track and asked Ms. Yamashita to compose all the music to be used for all Kaiju live performances, video clips and video scoring.

15. R. Borden stated that several record companies had offered compact disc projects and that he personally would suggest that Ms. Yamashita receive all the proceeds from the Kaiju music in return for composing the score, which would include about 12 songs and incidental music.

16. Ms. Yamashita took her estimate for writing the score to D. Borden, along with the demonstration track. After listening to the demonstration track and receiving the estimate, D.

Borden asked Ms. Yamashita to compose, write, arrange, record and produce musical songs to be used in the accompaniment of “Kaiju Big Battel” video.

17. Ms. Yamashita understood that the score would be included on videotapes and would be used at live events. No other uses or distributions were suggested by R. Borden or agreed to by Ms. Yamashita.

18. Ms. Yamashita thereafter, composed, wrote, arranged, recorded and produced a compact disk including ten songs, titled “The Kaiju Music for Kaiju Big Battel.”

19. Ms. Yamashita delivered the CD titled “The Kaiju Music for Kaiju Big Battel,” including the songs described above, to the Kaiju Defendants.

20. Although the Kaiju Defendants did not pay Ms. Yamashita upon receipt of the produced music, they confirmed their promise to compensate her for her work as an independent artist, composer, arranger and producer.

21. R. Borden indicated to Ms. Yamashita that she would be paid a fair value for the music delivered.

22. The Kaiju Defendants thereafter used the music from “The Kaiju Music for Kaiju Big Battel”, in videos and performances.

23. The Kaiju Defendants have never paid Ms. Yamashita for her costs and expenses incurred in the composition, writing, arrangement, recording and production of said music delivered to Studio Kaiju as promised.

24. Without permission, Studio Kaiju placed Ms. Yamashita’s entire score for “The Kaiju Music for Kaiju Big Battel” on their website starting on February 15, 2002, at [www.kaiju.com](http://www.kaiju.com), in a downloadable version, and invited customers who accessed the website to listen to it, download it and save it in perpetuity.

25. Studio Kaiju promoted Ms. Yamashita’s music along with Studio Kaiju’s property and merchandise including but not limited to music video clips, DVDs, trailers, commercials and performance shows.

26. In March 2002, Fenway Recordings, a recording studio promoting independent musical artists of multi-faceted musical genres including but not limited to merchandising, promoting and advertising musical talent, expressed an interest in Ms. Yamashita's music to her and to Studio Kaiju.

27. Ms. Yamashita provided an estimate for the production of 12 songs, which included compensation of \$1000 per song, but Fenway did not contract with Ms. Yamashita for this work.

28. Instead, in October 2002, without permission, Fenway released the album "Revenge of Boston" which included Ms. Yamashita's copyrighted song, "Los Plantanos theme song," from the prior score of "The Kaiju Music for Kaiju Big Battel." The "Los Plantanos theme song" has been posted on Fenway's website, [www.fenwayrecords.com](http://www.fenwayrecords.com), without permission, in its entirety since approximately the same time in 2002.

29. On information and belief, Fenway obtained this song from the Kaiju Defendants.

30. Fenway has not paid Ms. Yamashita any royalties for use of the copyrighted music.

31. Ms. Yamashita duly and timely registered "The Kaiju Music for Kaiju Big Battel," copyright registration number SRU494669, dated April 3, 2002.

32. Ms. Yamashita is the owner of the copyright in and to the music included in "The Kaiju Music for Kaiju Big Battel," and is also the owner of the copyright registration for "The Kaiju Music for Kaiju Big Battel," which includes "Los Plantanos theme song."

**Count I**

**(Copyright Infringement—All Defendants)**

33. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1 through 32 above.

34. Ms. Yamashita owns the music which she composed, arranged, recorded and produced. Ms. Yamashita has at no time relinquished any ownership rights in her copyright of "The Kaiju Music for Kaiju Big Battle."

35. Ms. Yamashita has obtained a copyright registration for "The Kaiju Music for Kaiju Big Battle," and has not relinquished any ownership rights in her copyright registration of "The Kaiju Music for Kaiju Big Battle."

36. The Kaiju Defendants published Ms. Yamashita's musical recordings on their website [www.kaiju.com](http://www.kaiju.com) without permission of Ms. Yamashita, the copyright owner.

37. The Kaiju Defendants knew that Defendant Fenway Recordings' planned to use, copy and distribute "Los Plantanos theme song." The Kaiju Defendants, upon information and belief, gave, sold or licensed Fenway Recordings a copy of "Los Plantanos theme song," without permission of Ms. Yamashita, the copyright owner, materially contributing to the infringement of the copyrighted work "The Kaiju Music for Kaiju Big Battel." This constitutes infringement under 17 U.S.C. § 106.

38. Defendant Fenway Recordings copied "Los Plantanos theme song," from "The Kaiju Music for Kaiju Big Battle" by including it on a compact disc which it sold under the name "Revenge of Boston," and distributed copies to the public, without authorization of the copyright owner.

39. The acts of defendants alleged above constitute infringement of the copyright in and to the registered work "The Kaiju Music for Kaiju Big Battel" and inducement of copyright infringement under 17 U.S.C. § 106.

40. Upon information and belief, the acts of Defendants were committed willfully and in disregard of Plaintiff's known rights, entitling Plaintiff to her damages and Defendants' profits from infringing or, at her election, increased statutory damages of up to \$150,000 per work infringed. Plaintiff is also entitled to her costs and attorneys' fees of this action pursuant to 17 U.S.C. § 505.

**Count II**

**(Breach of Contract—The Kaiju Defendants)**

41. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1 through 40, above.

42. Ms. Yamashita offered to prepare and deliver to the Kaiju Defendants a score for the “Kaiju Big Battel” video, and the Kaiju Defendants promised to pay Ms. Yamashita fair value.

43. Plaintiff Ms. Yamashita performed her obligations under the agreement. The Kaiju Defendants did not pay Ms. Yamashita.

44. A valid contract was created by the mutual promises of the parties and the performance of Ms. Yamashita.

45. Ms. Yamashita is entitled to her expectation damages as a result of Defendants’ breach of contract.

**Count III**

**(Promissory Estoppel—The Kaiju Defendants)**

46. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1 through 45, above.

47. The Kaiju Defendants actions and statements to Ms. Yamashita that she would be paid fair value for the agreed use of the score reasonably induced Ms. Yamashita to compose, write, arrange, record, and produce the score and to deliver it to the Kaiju Defendants, who then used the score for commercial purposes without compensation to Ms. Yamashita.

48. The Kaiju Defendants’ promise of payment of fair value on behalf of Studio Kaiju is binding because otherwise Plaintiff Ms. Yamashita would suffer an injustice.

49. Defendants are estopped by their conduct to dispute the existence of a binding and valid contract.

50. Ms. Yamashita is entitled to her expectation and/or reasonable reliance damages as a result of Defendants' breach.

**Count IV**

**(Unjust Enrichment—The Kaiju Defendants)**

51. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1 through 49.

52. The Kaiju Defendants are unjustly enriched by their acceptance of the score, "The Kaiju Music for Kaiju Big Battel" without compensation.

53. Ms. Yamashita has suffered injury by the actions of the Kaiju Defendants and is entitled to reimbursement for her expenses and for the reasonable value of her time.

54. The Kaiju Defendants should therefore reimburse Ms. Yamashita for her expenses and disgorge their profits to her.

**Count VII**

**(M.G.L. ch. 93A §11—All Defendants)**

55. Plaintiff repeats and incorporates by reference the allegations of 1 through 53, above.

56. Defendants Studio Kaiju and Fenway and Ms. Yamashita are engaged in trade or commerce in the Commonwealth of Massachusetts.

57. The acts and practices complained of occurred primarily and substantially in the Commonwealth of Massachusetts.

58. Defendant Studio Kaiju knowingly promised to pay for and accepted the musical recording compilation from Ms. Yamashita which she composed, arranged, wrote, recorded and produced. Defendant Fenway knew or should have known that Ms. Yamashita was the owner of the copyright in the musical works.

59. Without the knowledge or permission of Ms. Yamashita and without compensating her, Defendant Studio Kaiju and Defendant Fenway entered into a licensing and distribution agreement for the use of Ms. Yamashita's copyrighted musical recordings.

60. Ms. Yamashita was injured because she paid the expenses for composing, arranging, recording and producing the score and because she did not receive the compensation promised her by Defendant Studio Kaiju or any royalty payments due from Defendant Fenway.

61. Such actions of Defendants Studio Kaiju and Fenway were unfair and deceptive trade practices which were material, undertaken willingly and knowingly and which caused proximate damage to Ms. Yamashita in violation of M.G.L. ch. 93A § 11.

62. Ms. Yamashita is entitled to damages from Defendants' unfair competition, trebled, Defendants' profits in addition to Ms. Yamashita's damages, and her reasonable attorneys' fees.

**Prayer for Relief**

WHEREFORE, Plaintiff respectfully prays that this Court:

- (1) Enter judgment in favor of Plaintiff and against Defendants on each count of the Complaint;
- (2) Preliminary and permanently enjoin Defendants from publishing, posting, copying, offering to copy, or otherwise distributing Plaintiff's copyrighted works, including all versions thereof;
- (2) Order the Kaiju Defendants to account for and pay to Plaintiff all gains, profits and savings derived from its breach of contract;
- (3) Order the Kaiju Defendants to reimburse Plaintiff for her expenses incurred in the writing, composing, arranging, and producing of "The Kaiju Music for Kaiju Big Battle;"
- (5) Award Plaintiff her damages, or at her election, her statutory damages, for copyright infringement, including increased statutory damages for willful copyright infringement;
- (7) Award Plaintiff the damages sustained by Plaintiff as a result of Defendant's unfair or deceptive acts or trade practices;

(8) Award Plaintiff treble the damages sustained by plaintiff as a result of Defendant's illegal conduct because of Defendant's willful unfair or deceptive acts or trade practices in violation of M.G.L. ch. 93A;

(9) Award Plaintiff her attorneys' fees as part of her reasonable costs pursuant to 17 U.S.C. Section 505 and pursuant to M.G.L. ch. 93A;

(10) Award Plaintiff such other relief as the Court deems just and equitable.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues triable thereby.

Respectfully submitted,

Dated: February 14, 2005

  
\_\_\_\_\_  
Heidi E. Harvey (#548114)  
FISH & RICHARDSON P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
Telephone: (617) 542-5070

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

## I. (a) PLAINTIFFS

Thomas Cashman

(b) County of Residence of First Listed Plaintiff Norfolk  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) Kathleen Cross, Hanify & King, One Beacon St., Boston, MA 02108  
(617) 423-0400

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity  
(Indicate Citizenship of Parties in Item III)

## DEFENDANTS

International Business Machines CorporationCounty of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

CITY/STATE

Attorneys (If Known) Joan Ackerstein, Jackson Lewis LLP, 75 Park Plaza, Boston, MA 02116  
(617) 367-0025

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Product Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 2 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Sec. 1332

Brief description of cause: The court has original jurisdiction over this civil action because there is diversity of citizenship.

## VI. CAUSE OF ACTION

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$ potential

recovery exceeds \$75,000.00

CHECK YES only if demanded in complaint:

 Yes  No

## VII. REQUESTED IN COMPLAINT:

(See instructions): JUDGE

DOCKET NUMBER

DATE

2/15/05

SIGNATURE OF ATTORNEY OF RECORD

Jean Ackerstein

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Thomas Cashman vs International Business Machines Corporation, et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT  
DISTRICT OF MASS

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joan Ackerstein

ADDRESS Jackson Lewis LLP, 75 Park Plaza, Boston, MA 02116

TELEPHONE NO. (617) 367-0025

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Yamashita v. Kaiju Studios, LLC.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LIST ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1))

I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT  
II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730,  
740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.  
III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,  
315, 3320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,  
380, 385, 450, 891.  
IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,  
690, 810, 861-865, 870, 871, 875, 900.  
V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OR RELATED CASES. (SEE LOCAL RULE 40.1(E))

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? NO  
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403)

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? NO

7. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE SAME YES DIVISION?  
(a) IF YES, IN WHICH SECTION DO ALL THE EASTERN DIVISION PARTIES RESIDE?

9. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Heidi Harvey, Esq.ADDRESS Fish & Richardson, P.C., 225 Franklin Street, Boston, MA 02110TELEPHONE NO. (617) 542-5070

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

## I. (a) PLAINTIFFS

M.

(b) County of Residence of First Listed Plaintiff Suffolk  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Heidi E. Harvey  
Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
(617) 542-5070

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1. U.S. Government Plaintiff	X 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In this State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-- Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce/ICC Rates/etc
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<b>PERSONAL PROPERTY</b>		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth In Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 850 Securities/ Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 386 Product Liability		<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 421 Agriculture	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 520 Habeas Corpus:	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 660 Occupational Safety/Health	
			<input type="checkbox"/> 690 Other	
V. ORIGIN	(PLACE "X" IN ONE BOX ONLY)			
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	Transferred from another district (specify)
				<input type="checkbox"/> 6 Multidistrict Litigation
				<input type="checkbox"/> 7 Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 USC § 1338(a) and 17 USC § 301(a) – Copyright Infringement

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 Demand: \$  CHECK YES only if demanded in Complaint JURY DEMAND  Yes  No

VIII. RELATED CASE(S) (See Instructions) IF ANY JUDGE's DOCKET NUMBER

DATE 2/14/05 SIGNATURE OF ATTORNEY OF RECORD TYPE NAME OF ATTORNEY Heidi E. Harvey

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_